

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

CORBY D WADE
Claimant

APPEAL NO. 14A-UI-03108-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

J&D RESTAURANTS INC
Employer

OC: 06/23/13
Claimant: Appellant (4)

Iowa Admin. Code r. 871-24.23(10) – Approved Leave of Absence
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant filed an appeal from a representative's decision dated March 6, 2014, reference 03, which denied unemployment insurance benefits as of January 26, 2014 upon a finding that the claimant requested and was granted a leave of absence and therefore was voluntarily unemployed and not available for work. After due notice was provided, a hearing was held by telephone on April 14, 2014. The claimant participated. The employer participated by Ms. Accia Parker, Store Manager.

ISSUES:

At issues are whether the claimant filed a timely appeal and whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds: Ms. Corby Wade began employment with the captioned employer, doing business as McDonald's Restaurants, on December 30, 2013. Ms. Wade was hired to work as a part-time crewperson and most recently was scheduled to work two days per week. Ms. Wade was paid by the hour. Her immediate supervisor was Accia Parker, the store manager.

On or about February 12, 2014, Ms. Wade requested to be removed from company scheduling for the remainder of the month for medical reasons. The claimant was required to wait until March 1, 2014 to obtain prescription medications that would allow the claimant to resume working. Based upon the claimant's request, the parties agreed that the claimant would not be scheduled for work shifts for the remainder of the month of February. When the claimant received her medications on approximately March 1, 2014, she resumed normal scheduling with the company.

The claimant's appeal in this matter is considered timely. The notice of the adjudicator's decision was sent to a wrong address. The claimant had moved and had changed her address

both with Iowa Workforce Development and the postal service, however, the notice nevertheless was sent to the claimant's old mailing address.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

An otherwise eligible claimant is eligible to receive benefits with respect to any week only if the evidence indicates that the individual is able to work, is available for work, and is earnestly and actively seeking work. Iowa Code section 96.4-3 and 871 IAC 24.22. The claimant bears the burden of establishing that the claimant meets the above requirements. 871 IAC 24.22.

To satisfy the ableness requirement, an individual must be physically and mentally able to work and work in gainful employment. To satisfy the availability requirement, an individual must be willing, able and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual must be genuinely attached to the labor market.

A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for that period. 871 IAC 24.22(2)(j).

The evidence in the record establishes that Ms. Wade requested that she be taken off of company scheduling for her part-time work effective on or about February 12, 2014 for medical reasons. Because the claimant did not have the medications needed for her medical condition, the claimant was not able to work for the remainder of the month of February and had negotiated an agreement with the employer to keep her job position open for her until she could return on approximately March 1, 2014 when she received her prescription medications. The employer agreed to the claimant's request and kept the claimant's job position open for her until her return on or about March 1, 2014 when the claimant resumed employment.

Based upon the evidence in the record, the administrative law judge concludes that the claimant was not able and available for work effective February 12, 2014 until March 1, 2014 and was not eligible to receive unemployment insurance benefits because she requested and was approved for a leave of absence from February 12, 2014 through March 1, 2014.

DECISION:

The representative's decision dated March 6, 2014, reference 03, is hereby affirmed as modified. The portion of the determination finding that the claimant was not eligible to receive unemployment insurance benefits because she was on a leave of absence and not available for work is affirmed. The portion of the determination denying benefits as of January 26, 2014 is modified to deny benefits as of February 12, 2014 until March 1, 2014, when the claimant resumed employment.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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